

10-6 SANTA FE SMOKE FREE ORDINANCE. (UNOFFICIAL CODIFICATION)

10-6.1 Short Title. This section may be cited as the Santa Fe Smoke Free Ordinance.

10-6.2 Findings and Purpose.

A. Numerous studies have determined that environmental tobacco smoke is a major contributor to indoor air pollution and is now classified by the EPA as a Class A carcinogen. The studies have also found that breathing secondhand smoke can cause heart disease, lung cancer, respiratory infection and a loss of respiratory function in nonsmokers. At special risk are children, elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and health hazards induced by breathing secondhand smoke include emphysema, bronchoconstriction and bronchospasm.

B. Nonsmokers who suffer ill effects from secondhand smoke may experience a drop in productivity and an increase in sick leave.

C. The separation of people and tobacco smoke within the same air space may reduce but does not eliminate exposure to environmental tobacco smoke.

D. It is necessary to restrict smoking in areas not covered by the 1995 New Mexico State Clean Indoor Air Act, which calls for no smoking in state, county and city-owned buildings except in certain designated areas.

E. Accordingly, the city council finds and declares that the purposes of this section are (1) to protect the public health and welfare by prohibiting smoking in public places of employment; (2) to guarantee the right of nonsmokers to breathe smoke-free air; and (3) to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

10-6.3 Definitions. As used in this Ordinance:

Bar means an establishment that is devoted to the serving of alcoholic beverages for consumption by guest on the premises and in which the serving of food is only incidental to the consumption of those beverages including, but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

Business means any sole proprietorship, partnership, joint venture, corporation or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations or other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

Cigar bar means an establishment that:

A. Is a bar, as defined in this Section; and

B. Is engaged in the business of selling cigars for consumption by guest on the premises and generated ten percent (10%) or more of its total annual gross income or at least ten thousand dollars (\$10,000) in annual sales from the on-site sale of cigars and the rental of on-site humidors, not including any sales from vending machines, in the calendar year ending December 31, 2005. In any calendar year after December 31, 2005, a qualifying bar that fails to generate at least ten percent of its total annual gross income or ten thousand dollars (\$10,000) in annual sales from the on-site sale of cigars and the rental of on-site humidors shall not be defined as a "cigar bar" and shall not thereafter be included in the definition regardless of sales figures. The business shall agree to provide adequate information to demonstrate to the city's satisfaction compliance with this definition.

Cigarette vending machine means any self-service device, which, upon insertion of money or tokens, dispenses cigarettes without the necessity of replenishing the device between each vending operation.

Employee means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.

Employer means any person, partnership, corporation, including a municipal corporation or nonprofit entity, who employs the services of one (1) or more individual persons.

Enclosed area means all space between a floor and ceiling which is enclosed on all sides by walls, partitions or windows (exclusive of doors or passage ways), whether partially or fully extending from the floor towards to ceiling, and whether the walls or partitions are solid or not and compose a room, vestibule or cubicle.

Group home means a dwelling unit where full-time shelter, habilitation, care and supervision is given on a non-institutional basis to neglected, abandoned, physically handicapped, retarded, mentally disabled and substance or alcohol dependent children or adults on a private, nonprofit basis licensed by the appropriate governing body.

Health care facility means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

Health spa or health club means any place where therapeutic, rehabilitative or health maintenance services or equipment, with or without swimming facilities, saunas, steam rooms, and similar facilities, are available for use by patrons whether membership is required or not.

Hotel or motel means any building, or portion thereof, containing six (6) or more guest rooms designed, used or intended to be used by six (6) or more guests.

Nursing care facilities means any establishment devoted and maintained for the long term or hospice care of the aged, infirm, chronic or terminally ill.

Place of employment means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment. The area shall include but not be limited to work areas, lounges and restrooms, conference and classrooms, employee or public cafeterias, snack stands and coffee shops, and hallways. A private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility.

Private club means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a

constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

Public places or public spaces means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to banks and credit unions, bars, taverns and pubs, educational facilities, health facilities, commercial laundries, self-serve laundries, and dry cleaning establishments, public transportation facilities including airports, bus stations, buses, taxi cabs and paratransit vehicles, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters, museums and galleries, hospital, medical clinic and laboratory waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care or health care facility.

Restaurant or eating establishment means any coffee shop, cafeteria, sandwich stand, luncheonette, short-order cafe, soda fountain, private or public school cafeteria and any other indoor eating establishment which gives or offers for sale food to the public, guests or employees, as well as kitchens in which food is prepared on the premises for service elsewhere, including catering facilities. The term "restaurant" shall include a bar area within the restaurant as well as all outdoor eating areas.

Retail store means a store which carries, as its principal business, the selling of tangible commodities in small quantities directly to consumers.

Retail tobacco store means a retail store utilized primarily for the sale of tobacco products and accessories in which the sale of other product is merely incidental.

Service line means any indoor line at which one (1) or more people are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

Smoke or smoking means inhaling, exhaling, burning, holding or carrying any lighted cigarette, cigar, cigarillo, pipe, or other lighted tobacco product in any manner or in any form. "Smoke" also means the gaseous products or particles created by the use of a lighted cigarette, cigar, cigarillo, pipe or any other kind of smoking equipment.

Sports arena means enclosed sports pavilions, stadiums, coliseums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice skating rinks, bowling alleys or similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports events.

Transitional living facility, halfway house or shelter means a dwelling unit providing temporary shelter to the homeless, mentally disabled, substance or alcohol dependent individuals undergoing treatment, or abused or neglected adults. In addition, the facility shall provide referrals to appropriate agencies for assistance, treatment and follow-up care as required by the individual.

Truck stop means any facility located within the city primarily catering to and frequented by interstate cargo haulers for the purpose of obtaining rest or food, with or without showering facilities and having sufficient open space for parking large vehicles.

10-6.4 Application of Section to City-Owned Facilities.

All city of Santa Fe property shall be subject to the provisions of this section.

10-6.5 Smoking Prohibited in Public Places. Smoking shall be prohibited in all enclosed public places within the city of Santa Fe including, but not limited to, the following places:

- A. The Santa Fe Municipal Airport, and ticket, boarding and waiting areas of public transit depots.
- B. Elevators and stairwells.
- C. Restrooms, lobbies, reception areas, waiting rooms, hallways and any other common-use areas in all buildings open to the public.
- D. Buses, taxicabs and other means of public transit under the authority of the city of Santa Fe.
- E. Service lines.
- F. Retail stores and enclosed shopping malls.
- G. All areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including but not limited to, banks, hotels and motels, and convention halls.
- H. Restaurants and other eating establishments.
- I. Public telephone booths, stalls and phone bank areas.
- J. Aquariums, galleries, libraries and museums.
- K. Any facility which is primarily used for exhibiting any motion picture, stage performance, drama, lecture, musical recital or other similar performance, except performers when smoking is part of a stage production.
- L. Enclosed sports arenas including bowling facilities.
- M. Health care facilities.
- N. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city.
- O. Lobbies, party rooms, common rooms, hallways, and other areas used for social events in apartment houses, condominiums, trailer parks, retirement facilities, nursing care facilities, group homes, transitional living facilities, shelters, halfway houses and other multiple-unit residential facilities.
- P. Polling places.
- Q. Bingo games.
- R. Schools, academies and institutions of reaming instruction.
- S. Bars.
- T. Private clubs when being used for a function to which the general public is invited.
- U. Licensed child care and adult day care facilities.
- V. Outdoor patios of restaurants.

Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment.

10-6.6 Prohibition of Smoking in Places of Employment.

A. Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

B. This prohibition of smoking shall be communicated to all existing employees within three (3) weeks of its adoption and to all prospective employees upon their application for employment.

10-6.7 Distance from Entrances.

(1) Smoking shall occur only at a distance of twenty-five (25') feet in radius from the entrance to any enclosed area where smoking is prohibited to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or any other means.

(2) The owner, manager or operator of a restaurant or other eating establishment shall be responsible for ensuring that all outdoor eating areas under the control of the establishment are designated as nonsmoking areas, and shall post appropriate signs as necessary clearly indicating where smoking is prohibited under the provisions of this Ordinance.

10-6.8 Where Smoking Not Regulated.

A. Notwithstanding any other provision of this section to the contrary, the following areas shall not be subject to smoking restrictions of this section:

(1) Private residences, except when used as a child care, adult day care or health care facility.

(2) Hotel and motel rooms rented to guests that are designated as smoking rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor shall be contiguous and smoke from these rooms shall not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.

(3) Retail tobacco stores, provided that smoke from these stores does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.

(4) Enclosed areas in restaurants, hotel and motel conference or meeting rooms and public and private assembly rooms while these places are being used for private functions, provided that smoke from these areas does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.

(5) Above-ground open air parking lots and parking structures, truck stops and rest stops.

(6) Private clubs that have no employees, except when being used for a function to which the general public is invited.

(7) Private clubs organized by December 31, 2005, for the sole purpose of providing a venue for smoking cigars.

(8) Outdoor areas of places of employment except those covered by the provisions of Sections 10-6.5 and 10-6.7 SFCC 1987.

(9) Cigar bars, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance, and provided that no one under the age of 18 is permitted entry at any time. A cigar bar shall display a sign, at least four inches by six inches

in size in at least one conspicuous place, stating: "Smoking allowed. No one under the age of 18 is permitted."

B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

10-6.9 Posting of Signs.

A. Every public place and place of employment where smoking is totally prohibited by this section shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

B. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this section by the owner, operator, manager or other person having control of such area.

C. It shall be unlawful for any person to serve food or beverages to any person smoking within an enclosed eating establishment or an enclosed area of an eating establishment where smoking is prohibited under the provisions of this section.

10-6.10 Prohibition of Cigarette Vending Machines in Certain Locations.

No person shall install, maintain or operate any cigarette vending machine within buildings open to the public in any location which provides easy access to minor children, or in open air recreation sites where minor children may congregate. Exceptions to this will be as follows:

A. Fraternity houses and secret order societies.

B. Truck stops, rest areas and adult entertainment establishments.

10-6.11 Enforcement.

A. Enforcement of this section shall be implemented by the city manager, or his or her designee.

B. Notice of the provisions set forth in this section shall be given to all applicants for a business license in the city of Santa Fe.

C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the city manager.

D. All city of Santa Fe departments shall require, while an establishment is undergoing otherwise mandated inspections, a "self certification" from the owner, operator, manager or other person having control of such establishment that all requirements of this section have been complied with.

E. Any owner, operator, manager or employee of any establishment regulated by this Ordinance shall inform persons violating this section of the appropriate provisions thereof.

10-6.12 Non-Retaliation. No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because such employee, applicant, or customer exercises any right to a smoke-free environment afforded by this section.

10-6.13 Violations and Penalties.

A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this section to fail to comply with any of its provisions.

B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this section.

C. Any person who violates any provision of this section shall be guilty of an infraction, punishable by:

(1) A fine not exceeding one hundred dollars (\$100.) for a first violation.

(2) A fine not exceeding two hundred dollars (\$200.) for a second violation within one (1) year.

(3) A fine not exceeding five hundred dollars (\$500.) for each additional violation of this section within one (1) year.

D. Notwithstanding any other provision of this section, an employee or private citizen may bring legal action to enforce this section.

10-6.14 Public Education. The city manager shall engage in a continuing program to explain and clarify the purposes and requirements of this section to citizens affected by it, and to guide owners, operators, managers or other person who controls any establishment or facility in their compliance with it. Such a program may include publication of a brochure for affected businesses and individuals explaining the provisions of this section.

10-6.15 Other Applicable Laws. This section shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

10-6.16 Severability. If any provision, clause, sentence or paragraph of this section or the application thereof to any person or circumstances shall be held as invalid, such invalidity shall not affect the other provisions of this section. The section can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

10-6.17 Effective Date. The revisions made to Section 10-6 SFCC 1987 adopted by Ordinance No. 2006-20 shall be effective June 30, 2006 (30 days from the date of its adoption).